No. 533

In the Supreme Court of the United States

OCTOBER TERM, 1960

UNITED STATES OF AMERICA, PETITIONER

v.

STANLEY S. NEUSTADT, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

REPLY BRIEF FOR THE UNITED STATES

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All of the legal arguments respondents seek to advance in their brief have, we believe, been answered in our main brief. This reply brief is filed only for the purpose of (1) acknowledging an inadvertent and immaterial error in a quotation in the government's brief and (2) noting a significant omission in respondents' brief.

1. Respondents correctly note (Br. 29–30) that the government (Main Br. 46) attributed to Judge Cardozo in *Ultramares Corp.* v. *Touche*, 255 N.Y. 170, a statement which he made only in summary of a party's contention as to the doctrine expounded by

him in *Glanzer* v. *Shepard,* 233 N.Y. 236. There is no question that Judge Cardozo, in the *Ultramares* case, rejects the notion that there may be liability for negligent talk where privity or some other connection or relationship between plaintiff and defendant is lacking. Indeed, at page 30 of our main brief, we emphasize and rely on this phase of the *Utramares* decision. But the point discussed at page 46 in our brief, and for which we referred to the incorrect quotation, was simply that *Glanzer* and the other New York cases stood for the proposition that liability was predicated, not on some physical act preceding the misrepresentation, but rather on the negligent representation itself, assuming that the requisite privity was present. We show below that as to this proposition Judge Cardozo fully concurred in the view that the New York cases can be explained only on the theory that liability was based on the misrepresentation itself, rather than on any prior physical act.

However, urging that in *Glanzer* the New York Court of Appeals held the defendants liable for careless weighing and not for the misrepresentation of the true weight of the beans, respondents argue that the gravamen of their complaint is negligent inspection rather than misrepresentation of value, which they term "an insignificant and unnecessary link in the causative chain of events" leading to their injury (Br. 29). Both respondents' premise as to the meaning of *Glanzer* and their conclusion as to the instant case are fallacious.

In *International Products Co.* v. *Erie R.R. Co.*, 244 N.Y. 331, 337, the Court of Appeals explained its decision in *Glanzer* as follows:

> A public weigher, hired by the seller to weigh goods, realizing that the buyer would rely *on his certificate* in paying therefor, was held liable for *erroneous statements* contained therein. . . . There was so far as appeared no negligence in the act of weighing. The negligence was inferred from the issuance of a false certificate. That was the wrong for which a recovery was allowed. * * * [Emphasis added.]

The same view was, in fact, expressed by the court in *Ultramares Corp.* v. *Touche, supra.* Judge Cardozo explained that in *Glanzer* he had suggested "that the liability there enforced was not one for the mere utterance of words without due consideration, but for a negligent service, the act of weighing, which happened to find in the words of the certificate its culmination and its summary," as an "endeavor to emphasize the character of the certificate as a business transaction, an act in the law, and not a mere casual response to a request for information." 255 N.Y. at 184. He went on to declare that, as the court showed in *International Products Co.* v. *Erie R.R. Co., supra,* "the rendition of a service [*i.e.* the weighing in *Glanzer*] is at most a mere circumstance and not an indispensable condition. The Erie was not held for negligence in the rendition of a service. It was held for words and nothing more. So in the case at hand." *Ibid.* See, to the same effect, *Doyle* v. *Chatham & Phenix Nat'l Bank,* 253 N.Y. 369; *Court-*

een Seed Co. v. *Hong Kong & Shanghai Banking Co.*, 245 N.Y. 377.

Thus, reliance by the court below or by respondents on the *Glanser* doctrine for the theory that respondents were injured in this case by a negligent inspection of property rather than by a misrepresentation of the value of that property, is misplaced. In *Glanser*, the injury was caused by misrepresenting the weight of the beans and not by any negligence in weighing (which was not shown),[1] in *International Products* by misstating the place of storage and not by negligence in ascertaining the facts,[2] and in *Ultramares* by misrepresenting the condition of the company rather than by negligence in ascertaining that condition (which the court held the facts to have shown).[3] In this case, respondents were injured, if at all, not by negligent inspection but by an erroneous representation of the value of the property. Whether the erroneous representation was made explicitly by furnishing the appraisal report to respondents or whether the erroneous representation was made implicitly by fixing the amount of the maximum mortgage insurance available to the respondents,[4] it was clearly the *sine qua non* of the

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[1] *International Products Co.* v. *Erie R.R. Co.*, 244 N.Y. 331, 337; *Ultramares Corp.* v. *Touche*, 255 N.Y. 170, 184.

[2] 244 N.Y. 331, 334–35.

[3] 255 N.Y. 170, 176–179, 184, 185.

[4] It will be remembered that the maximum insurable mortgage is a specified fraction of "the appraised value" of the property. 48 Stat. 1248, as amended, 12 U.S.C. 1709(b)(2) (1952 ed., Supp. IV). See pp. 4–5 of our main brief.

alleged injury. It is obvious that if the inspection had been negligently conducted, but the results not reported to respondents, there would have been no injury. It was only the misrepresentation that caused the alleged damage. This fact, from which the respondents cannot escape, calls for full application of the specific exclusionary provision in 28 U.S.C. 2680(h). To follow respondents' arguments would write out of the Federal Tort Claims Act the exclusion of liability of the United States for the tort of misrepresentation.

2. Respondents attempt to show that Congress, in providing that the home buyer be given a copy of the appraisal statement, intended that the government furnish the buyer "the informed judgment of a professional technician" as to the value of the property which he intends to purchase, so that the buyer could look to the government for compensation where the property in fact proved to be worth less (Br. 13–19). In support of this argument, respondents strongly rely on the report of the congressional conference committee which, they state, furnishes "a full, and for the purposes of this case a compelling, explanation of the reasons for . . . adoption" of Section 226 of the National Housing Act[4] (Br. 17). They quote at length from this report a selected passage tending to show that Congress intended the furnishing of the appraisal statement to the buyer to be for the latter's benefit (Br. 17–18). However, respondents stop the

[4] As added by the Housing Act of 1954, 68 Stat. 607, 12 U.S.C. 1715q.

quotation just at the point where the conference report tells *how* Congress intended the buyer to benefit. When this portion is added to the last sentence of respondents' quotation, we find a different picture from that which they paint:*

> Generally speaking, an appraisal of the long-term economic value of a particular residential property represents the informed judgment of a professional technician as to the dollar amount which a well-informed purchaser, acting without duress or compulsion, would be warranted in paying for such property for long-term use or investment. To a large extent, this is determined by the price at which other properties, which are comparable as to location, type of construction, size, and other amenities, are being freely sold in the open market. But, irrespective of market price, the upper limit for such an appraisal would always be the estimated reproduction cost of the property. Thus, appraisal of the long-term economic value as the basis for insurance of home mortgage loans by the FHA can have two important effects in terms of consumer protection.
>
> *First,* by providing the new and more liberal mortgage insurance terms contained in the conference substitute, the Congress is seeking to benefit the individual families seeking to buy homes. The committee of conference desires to assure that these terms would not have an inflationary effect upon the going market prices for homes which might be reflected in upward

* For convenience, we begin with the last sentence of the portion of the report given by respondents, and continue from there.

pressure on prices which, in turn, might be reflected in FHA valuations. An appraisal system, such as FHA's, based on long-term economic value would preclude valuations in excess of carefully estimated replacement costs *as an upper limit* in respect to new homes, and in excess of replacement cost, less deterioration, in respect to existing homes. Therefore, any temporary cost or price rise, attributable to the new and more liberal mortgage insurance provisions contained in the conference substitute or otherwise, should not be reflected in FHA valuations to the detriment of individual home buyers.

Second, in those cases where a reasonable and careful estimate of the costs required to reproduce a fully comparable residential property may, for one reason or another, be less than the current market price for such properties, the individual consumer would obtain the benefit thereof since the FHA's appraisal of the property at such lower figure would be available to him and the maximum approvable FHA loan would be based on the lower of the two figures.[7]

From this, it is clear that Congress intended to add to the primary purpose of the F.H.A. appraisal system—to protect the government's investment[8]—the secondary purpose of helping to protect the buyer from artificially inflated prices, perhaps beyond the replacement cost, caused by the easy mortgage terms available. Certainly, there is nothing to show that

[7] H. Conf. Rep. 2271, 83d Cong., 2d Sess., pp. 67–68.
[8] *Id.* at 66.

Congress intended to create a duty by which the gov
ernment would compensate a purchaser whenever
due to the government's negligence the property was
not in fact worth the appraised valuation.

CONCLUSION

For the reasons stated in the government's main
brief and for the further reasons stated herein, the
judgment below should be reversed.

Respectfully submitted.

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SUPREME COURT OF THE UNITED STATES

No 533.—October Term, 1960.

United States, Petitioner, v. Stanley S. Neustadt, et al. | On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit.

[May 29, 1961.]

Mr. Justice Whittaker delivered the opinion of the Court.

Pursuant to the provisions of the National Housing Act of 1934,[1] as amended, the Federal Housing Administration (FHA) is authorized, in certain instances, to insure the partial repayment of loans secured by mortgages executed to finance the purchase of private residential properties.[2] When duly requested to do so by a qualified lender, the FHA, through its appraisal staff, makes an inspection of property offered for sale in order to determine whether

[1] 48 Stat. 1246, 12 U. S. C. §§ 1701 *et seq.*

[2] Section 203 of the National Housing Act of 1934, as amended, 12 U. S. C. § 1709 (1952 ed., Supp. IV), provided at the times here pertinent that:

"(a) The [Federal Housing] Commissioner is authorized, upon application by the mortgagee, to insure as hereinafter provided any mortgage offered to him which is eligible for insurance as hereinafter provided, and, upon such terms as the Commissioner may prescribe, to make commitments for the insuring of such mortgages prior to the date of their execution or disbursement thereof.

"(b) To be eligible for insurance under this section a mortgage shall—

"(2) Involve a principal obligation . . . not to exceed an amount equal to the sum of (i) 95 per centum . . . of $9,000 of the [FHA]

the property is eligible for FHA mortgage insurance, and to assign an appraised value establishing the maximum amount of mortgage insurance obtainable.[3]

The question for decision in this case is whether the United States may be held liable, under the Federal Tort Claims Act, 28 U. S. C. § 1346 (b),[4] to a purchaser of residential property who has been furnished a statement reporting the results of an inaccurate FHA inspection and appraisal, and who, in reliance thereon, has been induced by the seller to pay a purchase price in excess of the property's fair market value. The answer turns upon the correct interpretation of 28 U. S. C. § 2680 (h), which precludes recovery under the Tort Claims Act upon "[a]ny claim arising out of . . . misrepresentation." The material facts giving rise to the controversy are not in dispute, and may be summarized as follows.

Early in 1957, the property in question, consisting of a 16-year-old single-family brick house and lot located in Alexandria, Virginia, was offered for sale by its owners. To assure that FHA mortgage insurance would be available to secure a loan in the event that the purchaser, when ascertained, might desire to finance the purchase by that method, the owners requested a qualified lending institution to take the necessary steps to have the property inspected and appraised by the FHA; and pursuant

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appraised value (as of the date the mortgage is accepted for insurance), and (ii) 75 per centum of such value in excess of $9,000 . . . ."

[3] 24 CFR §§ 200.145, 200.146, 200.148 (1959 ed.).

[4] "[T]he district courts . . . shall have exclusive jurisdiction of civil actions on claims against the United States, for money damages . . . for injury or loss of property . . . caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred."

to the lending agent's application,[5] an FHA appraiser visited and inspected the premises. On the basis of that inspection, which disclosed no defects that would disqualify the property for mortgage insurance, the FHA issued to the lending agency a "conditional commitment,"[6] stating that the property had been approved for mortgage insurance and, for that purpose, had been assigned an appraised value of $22,750. Under § 203 (b) (2) of the National Housing Act,[7] the maximum amount of mortgage insurance obtainable on an appraised value of $22,750 was $18,800.[8]

Shortly thereafter, the respondents, Mr. and Mrs. Stanley S. Neustadt, examined the property and became interested in buying it. After negotiations extending over the period of a month, in the course of which respondents were advised by the sellers that the property had been appraised by the FHA at a value of $22,750 for mortgage insurance purposes, respondents entered into a conditional contract to purchase the property at a price of $24,000. The contract was conditioned upon the respondents' obtaining a loan secured by an FHA-

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[5] An application for FHA mortgage insurance may be made only by a financial institution approved as a mortgagee by the FHA. § 203 (a), National Housing Act, *supra*, 12 U. S. C. § 1709 (a). Applications may be, and commonly are, made in advance of actual sale and execution of the mortgage, 24 CFR § 221.9 (1959 ed.), in order that the seller may have the property inspected, approved, and appraised for mortgage insurance while the purchaser is still unknown.

[6] The commitment to insure a mortgage is conditioned upon the mortgagor's being found financially able to carry the mortgage. 24 CFR §§ 200.147, 200.148 (1) (1959 ed.).

[7] Note 2, *supra*.

[8] Under § 203 (b) (2), the maximum insurable amount was $18,862.50 (95% of $9,000, plus 75% of $13,750). By FHA regulations, mortgages were insurable only in multiples of $100. 24 CFR § 221.17 (a) (1958 Supp.).

insured mortgage in the amount of $18,800. In accordance with § 226 of the National Housing Act,[9] the contract also provided that the sellers would deliver to respondents, prior to the sale of the property, a written statement setting forth the FHA-appraised value. Both conditions were fulfilled, and on the settlement date, July 2, 1957, respondents took title to the property, and acknowledged by their signatures that they had been furnished with a written "Statement of FHA Appraisal." This was an official FHA document, stating that the FHA "has appraised the property identified . . . and for mortgage insurance purposes has placed an appraised value of $22,750 on such property as of the date of this statement. (*The FHA appraised value does not establish sales price.*)" (Emphasis in original.)

Respondents moved into the house on July 10, 1957. According to their testimony, they had previously inspected the house "quite carefully," and had found "absolutely nothing which would indicate the necessity for any redecoration at all." The house was "immaculately clean" and the walls and ceilings "looked fine." However, within a month after respondents moved in, substantial cracks developed in the ceilings and in the interior and exterior walls throughout the house. When building repair contractors were unable to ascertain the cause of the cracks, the original builder of the house and four FHA field inspectors were summoned, and a

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[9] Section 226 was enacted in 1954 (68 Stat. 607, 12 U. S. C. § 1715q) and provides in pertinent part as follows:

"The Commissioner is hereby authorized and directed to require that, in connection with any property . . . approved for mortgage insurance . . . the seller or builder . . . shall agree to deliver, prior to the sale of the property, to the person purchasing such dwelling for his own occupancy, a written statement setting forth the amount of the appraised value of the property as determined by the Commissioner. . . ."

thorough investigation was made by them. By drilling a hole through the concrete floor of the basement, it was discovered that the subsoil was composed of a type of clay which becomes pliable when moist. Due to poor drainage conditions on the surface, water had seeped into the clay, causing it to shift beneath the foundations of the house and to produce the cracks which had appeared in the walls and ceilings.

Ten months thereafter, respondents commenced this action against the Government, under the Federal Tort Claims Act, in the United States District Court for the Eastern District of Virginia, seeking recovery of the difference between the fair market value of the property and the purchase price of $24,000. The complaint alleged that the FHA's inspection and appraisal of the property for mortgage insurance purposes had been conducted negligently; that respondents were justified in relying upon the results of that inspection and appraisal; and that they "would not have purchased the property for $24,000 but for the carelessness and negligence of [FHA]."

After trial, the District Court found [10] that respondents "in good faith relied upon the [FHA's] appraisal in consummating their contract of purchase," and that "reasonable care by a qualified appraiser would have warned" respondents of the "serious structural defects" in the house which had been "preponderantly proved." On that basis, the court adjudged the Government liable in the amount of $8,000, which it found to be the difference between the property's fair market value at the time of sale ($16,000) and the purchase price ($24,000).

On appeal, the judgment was affirmed by the Court of Appeals for the Fourth Circuit, 281 F. 2d 596, over the

[10] There is no right to a jury trial under the Tort Claims Act. 28 U. S. C. § 2402.

Government's sedulous objection that recovery was barred by 28 U. S. C. § 2680 (h), which excepts from the coverage of the Tort Claims Act "[a]ny claim arising out of . . . misrepresentation." Because of the importance of the question, and to resolve an apparent conflict between the Fourth Circuit's decision and the holdings of other Circuits uniformly construing the "misrepresentation" exception of § 2680 (h) to preclude recovery on closely analogous facts,[11] we granted certiorari. 364 U. S. 926. We have concluded that the interpretation adopted by the Fourth Circuit is erroneous, and that the Government must be absolved from liability.

In its complete form, § 2680 (h) excludes recovery under the Federal Tort Claims Act upon "[a]ny claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, *misrepresentation, deceit,* or interference with contract rights." (Emphasis added.) The Government's position is that, since Congress employed both the terms "misrepresentation" and "deceit" in § 2680 (h), it clearly meant to exclude claims arising out of negligent, as well as deliberate, misrepresentation; and therefore, even assuming that the District Court correctly found that the inaccurate FHA appraisal in this case resulted from a negligent inspection, and that respondents relied upon that appraisal to their detriment,[12] the claim must nevertheless fail as one "arising out of . . . [negligent] misrepresentation."

We are in accord with the view urged by the Government, and unanimously adopted by all Circuits which have previously had occasion to pass on the question, that § 2680 (h) comprehends claims arising out of negligent, as well as willful, misrepresentation.

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[11] The cases are cited and discussed at pp. 7–9, *infra*.

[12] Neither in the Court of Appeals, nor in this Court, has the Government chosen to contest these findings.

The leading precedent has been the Second Circuit's decision in *Jones* v. *United States*, 207 F. 2d 563, which involved a statement issued to the plaintiffs by the United States Geological Survey erroneously estimating the oil-producing capacity of certain land. In reliance upon that statement, plaintiffs sold securities representing oil and gas rights in the land for less than their actual value, and later sought to recoup their loss from the Government under the Tort Claims Act on a complaint alleging negligent misrepresentation. Affirming a dismissal of the complaint, the Second Circuit tersely pointed out that § 2680 (h) applies to both "misrepresentation" and "deceit," and, "[a]s 'decit' means fraudulent misrepresentation, 'misrepresentation' must have been meant to include negligent misrepresentation, since otherwise the word 'misrepresentation' would be duplicative." 207 F. 2d, at 564. Following this interpretation, in an unbroken line, are the cases of *National Mfg. Co.* v. *United States*, 210 F. 2d 263 (C. A. 8th Cir.); *Clark* v. *United States*, 218 F. 2d 446 (C. A. 9th Cir.); *Miller Harness Co.* v. *United States*, 241 F. 2d 781 (C. A. 2d Cir.); *Anglo-American Corp.* v. *United States*, 242 F. 2d 236 (C. A. 2d Cir.); *Hall* v. *United States*, 274 F. 2d 69 (C. A. 10th Cir.). In accord also are *Social Security Adm'n* v. *United States*, 138 F. Supp. 639 (D. C. D. Md.), and *United States* v. *Van Meter*, 149 F. Supp. 493 (D. C. N. D. Cal.).

Throughout this line of decisions, the argument has been made by plaintiffs, and consistently rejected by the courts, until this case, that the bar of § 2680 (h) does not apply when the gist of the claim lies in *negligence* underlying the inaccurate representation, *i. e.*, when the claim is phrased as one "arising out of" negligence rather than "misrepresentation." But this argument, as was forcefully demonstrated by the Tenth Circuit in *Hall* v. *United States*, *supra*, is nothing more than an attempt to circumvent § 2680 (h) by denying that it applies to

negligent misrepresentation. In the *Hall* case, it was alleged that agents of the Department of Agriculture had negligently inspected the plaintiff's cattle and, as a result, mistakenly reported that the cattle were diseased. Relying upon that report, plaintiff sold the cattle at less than their fair value, and sought recovery from the Government of his loss on the ground that it had been caused by the negligent inspection underlying the agents' report, rather than by the report itself. The Tenth Circuit rejected the claim, stating:

> "We must then look beyond the literal meaning of the language to ascertain the real cause of complaint. . . . Plaintiff's loss came about when the Government agents misrepresented the condition of the cattle, telling him they were diseased when, in fact, they were free from disease. . . . This stated a cause of action predicated on a misrepresentation. Misrepresentation as used in the exclusionary provision [of § 2680 (h)] was meant to include negligent misrepresentation." 274 F. 2d, at 71.[13]

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[13] In *Anglo-American & Overseas Corp.* v. *United States*, 242 F. 2d 237, the Second Circuit analyzed a similar claim and exposed its true basis: "[Plaintiff] contracted to sell tomato paste to the United States, which required as a condition precedent to its acceptance of the paste that it satisfy the standards of the Food and Drug Administration. The paste was imported; and the Food and Drug Administration, after sampling it, issued 'release notices' that notified Customs officers that the tomato paste could enter the country. [Plaintiff] then accepted delivery. When it in turn delivered the paste to the government, federal officials once again inspected the paste, found that it did not satisfy the standards of the Food and Drug Administration, and ordered it destroyed. [Plaintiff] sues now on the ground that the negligence of officials of the Food and Drug Administration in sampling the tomato paste and in issuing the 'release notices' induced it to accept the paste and thus suffer damages.

"This claim, it is clear, 'arose out of' the assertedly negligent repre-

In the instant case, the Fourth Circuit took the opposite view, and held that respondents could recover on the sole basis of the underlying negligence. Although it agreed that § 2680 (h) embraces both "negligent" and "willful" misrepresentation, and that respondents' claim "might form the basis of an action for misrepresentation under general common-law principles," 281 F. 2d, at 601, it deemed § 2680 (h) inapplicable here for the reason that the misrepresentation was "merely incidental" to the "gravamen" of the claim, *i. e.*, "the careless making of an excessive appraisal so that [respondents were] . . . deceived and suffered substantial loss." *Id.*, at 602. Since § 226 of the National Housing Act [14] requires that a seller of property approved for FHA mortgage insurance "shall agree to deliver, prior to the sale of the property, to the person purchasing such [property], a written statement setting forth the amount of the [FHA] appraised value . . . ," the Fourth Circuit reasoned that the FHA appraisal procedure was designed to protect prospective home purchasers; that the Government (through the FHA) therefore "owed a specific duty" to respondents to make a careful appraisal; and that "if the Government assumes a duty and negligently performs it, a party injured thereby may recover damages even though the careless performance of the duty may have been accompanied by some misrepresentation of fact." *Id.*, at 600.

Whether or not this analysis accords with the law of States which have seen fit to allow recovery under anal-

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sentation of the quality of the tomato paste by federal employees. Such a claim is barred by . . . Section 2680 (h) . . . [which excepts] from liability negligent as well as intentional misrepresentation." *Id.*, at 236–237.

[14] Note 8, *supra*.

ogous circumstances,[15] it does not meet the question of whether this claim is outside the intended scope of the Federal Tort Claims Act, which depends solely upon what Congress meant by the language it used in § 2680 (h).

To say, as the Fourth Circuit did, that a claim arises out of "negligence," rather than "misrepresentation," when the loss suffered by the injured party is caused by

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[15] The Fourth Circuit sought primary support from the New York Court of Appeals' decision in *Glanzer* v. *Sheppard*, 233 N. Y. 236, 135 N. E. 275, in which the defendants, who were public weighers, were requested by a vendor to weigh certain goods and to issue a certificate of weight to the buyer. The goods were weighed inaccurately, and on the strength of the erroneous weight certificate, the buyer paid an excessive purchase price. In allowing the buyer to recover from defendants, the New York court looked primarily to the negligence in performing the act of weighing, and stated that defendants were liable both for their "careless words" and their "careless performance of a service." The case has been widely discussed by tort authorities as epitomizing "negligent misrepresentation." See, *e. g.*, 1 Harper and James, Torts 546–548 (1956); Prosser, Torts 734, 737 (1941 ed.); Bohlen, Should Negligent Misrepresentations Be Treated as Negligence or Fraud?, 18 Va. L. Rev. 703, 708 (1932). *Glanzer* has been followed in a number of States which have broken from the earlier, virtually unanimous, American view subscribing to the English case of *Derry* v. *Peek*, L. R. 14 App. Cas. 337, 58 L. J. Rep. Ch. 864 (1889) (refusing to allow recovery for negligent misrepresentation). See cases cited in 1 Harper and James, Torts 546, n. 5 (1956). Cf. *Ultramares Corp.* v. *Touche*, 255 N. Y. 170, 174 N. E. 441.

Under the Federal Tort Claims Act, when a claim is not barred by one of the Act's exclusionary provisions, the liability of the Government must be determined "in accordance with the law of the place where the act or omission occurred." 28 U. S. C. § 1346 (b). The Fourth Circuit's opinion, although it concluded that § 2680 (h) did not bar respondents' claim, did not indicate whether Virginia law follows the New York rule of *Glanzer* v. *Sheppard*, *supra*. In view of our conclusion that § 2680 (h) applies, we need not explore this question.

the breach of a "specific duty" owed by the Government to him, *i. e.*, the duty to use due care in obtaining and communicating information upon which that party may reasonably be expected to rely in the conduct of his economic affairs, is only to state the traditional and commonly understood legal definition of the tort of "negligent misrepresentation," as is clearly, if not conclusively, shown by the authorities set forth in the margin,[16] and

[16] The American Law Institute's Restatement of Torts (1938), c. 22, "DECEIT: BUSINESS TRANSACTIONS," Topic 3, "Negligent Misrepresentations," states as follows:

"§ 552. Information Negligently Supplied for the Guidance of Others.

"One who in the course of his business or profession supplies information for the guidance of others in their business transactions is subject to liability for harm caused to them by their reliance upon the information if

"(a) he fails to exercise that care and competence in obtaining and communicating the information which its recipient is justified in expecting, and

"(b) the harm is suffered

"(i) by the person or one of the class of persons for whose guidance the information was supplied, and

"(ii) because of his justifiable reliance upon it in a transaction in which it was intended to influence his conduct or in a transaction substantially identical therewith."

Prosser, Torts (1941 ed.), c. 16, "Misrepresentation," § 87, "Basis of Responsibility," states:

"Responsibility for misrepresentation may be divided into the usual tort classifications. It may rest upon:

"a. An intent to deceive, consisting of belief that the representation is false. . . . [S]uch an intent is required for the action of deceit.

"b. Negligence in obtaining information or making the representation. . . .

"c. A policy holding the maker strictly responsible for the truth of the representation . . . ."

See also Bohlen, Misrepresentation as Deceit, Negligence, or Warranty, 42 Harv. L. Rev. 733, 735–739 (1929); 23 Am. Jur., Fraud and Deceit, § 126, "Negligent Representations" (1939).

which there is every reason to believe Congress had in mind when it placed the word "misrepresentation" before the word "deceit" in § 2680 (h). As the Second Circuit observed in *Jones* v. *United States, supra*, "deceit" alone would have been sufficient had Congress intended only to except deliberately false representations.[17] Certainly there is no warrant for assuming that Congress was unaware of established tort definitions when it enacted the Tort Claims Act in 1946, after spending "some twenty-eight years of congressional drafting and redrafting, amendment and counter-amendment." *United States* v. *Spelar*, 338 U. S. 217, 219–220. Moreover, as we have said in considering other aspects of the Act: "There is nothing in the Tort Claims Act which shows that Congress intended to draw distinctions so finespun and capricious as to be almost incapable of being held in the mind for adequate formulation." *Indian Towing Co.* v. *United States*, 350 U. S. 61, 68.

Regarding the Court of Appeals' assertion that the Government owed respondents a "specific duty" to make and communicate an accurate appraisal of the property, by virtue of the provisions of the National Housing Act, we have carefully examined the rather extensive legislative history of that statute, giving particular attention to § 226 thereof,[18] and have found nothing from which we may reasonably infer that Congress intended, in a case

[17] See 2 Harper and James, Torts § 29.13, The Federal Tort Claims Act: Exceptions to Liability, p. 1655 (1956).

[18] 78 Cong. Rec. 11980 *et seq.*; 1st Annual Report of FHA (1935) (*passim*); 100 Cong. Rec. 12349–12360; S. Rep. No. 1472, 83d Cong., 2d Sess.; S. Rep. No. 2271, 83d Cong., 2d Sess.; H. R. Rep. No. 1429, 83d Cong., 2d Sess.; H. R. Rep. No. 2271, 83d Cong., 2d Sess.; Hearings Before the Senate Committee on Banking and Currency on the Housing Act of 1954, 83d Cong., 2d Sess.; Hearings before the House Committee on Banking and Currency on Housing Act of 1954, 83d Cong., 2d Sess.

such as this, to limit or suspend the application of the "misrepresentation" exception of the Tort Claims Act. Long before § 226 was added to the National Housing Act, in 1954, requiring sellers to inform prospective buyers of FHA-appraised value, it had been recognized in Congress that FHA appraisals would be a matter of public record, and would thus inure, incidentally, to the benefit of prospective home purchasers, by affording them the "protection of knowing the appraised value set upon the property . . . by a trained valuator acting in accordance with a procedure designed to reduce to a minimum errors that might result from casual or hasty conclusions." [19] But at the same time, it was repeatedly emphasized that the primary and predominant objective of the appraisal system was the "protection of the Government and its insurance funds"; [20] that the mortgage insurance program was not designed to insure anything other than the repayment of loans made by lender-mortgagees; [21] and that "there is no legal relationship between the FHA and the individual mortgagor." [22] Never once was it even intimated that, by an FHA appraisal, the Government would, in any sense, represent or guarantee to the purchaser that he was receiving a certain value for his money.

Nor is there any indication that Congress intended, by its 1954 addition of § 226, to modify the legislation's fundamental design from a system of mortgage repayment insurance to one of guaranty or warranty to the purchaser of value received. On its face, § 226 goes no

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[19] First Annual Report of FHA 17 (1935). See also 90 Cong. Rec. A2985; 78 Cong. Rec. 11981.

[20] H. R. Rep. No. 2271, 83d Cong., 2d Sess., p. 66.

[21] 78 Cong. Rec. 11981; 1st Annual Report of FHA, 15 (1935).

[22] H. R. Rep No. 2271, 83d Cong., 2d Sess., pp. 66–67.

further than to require that a seller of property approved for FHA mortgage insurance shall furnish to the buyer, prior to sale, a written statement disclosing the FHA-appraised value.[23] That Congress did not thereby intend to convert the FHA appraisal into a warranty of value, or otherwise to extend to the purchaser any actionable right of redress against the Government in the event of a faulty appraisal, was made irrefutably clear in the Committee Hearings in both Houses of Congress, the pertinent excerpts from which are set forth in the margin.[24] Moreover, at the time § 226 was adopted, it is not unreasonable to suppose that Congress was aware of the "misrepresentation" exception in the Tort Claims Act, and

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[23] Note 9, *supra*.

[24] It was stated by Representative Dollinger, in the Hearings before the Subcommittee on Housing of the House Committee on Banking and Currency on "Housing Constructed Under VA and FHA Programs," 82d Cong., 2d Sess., at 163:

"The Government did not guarantee, on your getting the home, that the home would be in good condition. As I pointed out before, there has been a misconception of the idea. The Government never approved the building. All it says is that the FHA loans are guaranteed to the builder or to the bank."

In the Hearings before the Senate Committee on Banking and Currency on Housing Act of 1954, 83d Cong., 2d Sess., at 1402–1403, the following colloquy was recorded between Senator Bennett and Home Finance Administrator Cole:

"Mr. COLE: . . . I agree with the Senator that the home buyer should understand that the Federal Government is not guaranteeing his home.

"Senator BENNETT: That is correct. . . . The idea of the inspection service under title II is to protect the Federal Government, which undertakes to insure the loan. The fact that the inspection is made, provides collateral benefits to the property owner. There is no question about that. But in the last analysis the property owner cannot say to the Federal Government, 'Well, your inspector inspected my house, and now look what's happened; therefore, you are responsible; therefore, you must come down here and fix it up.'"

that it had been construed by the courts to include "negligent misrepresentation."[25]

The compulsory disclosure provision of § 226 is but one of numerous instances in which Congress has relegated to a governmental agency the duty either to disclose directly, or to require private persons to disclose, information for the assistance and guidance of other persons in the conduct of their economic and commercial affairs. In practically all such instances, it may be said that the Government owes a "specific duty" to obtain and communicate information carefully, lest the intended recipient be misled to his financial harm. While we do not condone carelessness by government employees in gathering and promulgating such information, neither can we justifiably ignore the plain words Congress has used in limiting the scope of the Government's tort liability.[26]

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[25] *Jones* v. *United States*, *supra*, and *National Mfg. Co.* v. *United States*, *supra*, had both been decided, by the Second and Eighth Circuits, respectively, when Congress enacted § 226 in 1954.

[26] Our conclusion neither conflicts with nor impairs the authority of *Indian Towing Co.* v. *United States*, 350 U. S. 61, which held cognizable a Torts Act claim for property damages suffered when a vessel ran aground as a result of the Coast Guard's allegedly negligent failure to maintain the beacon lamp in a lighthouse. Such a claim does not "arise out of . . . misrepresentation," any more than does one based upon a motor vehicle operator's negligence in giving a misleading turn signal. As Dean Prosser has observed, many familiar forms of negligent conduct may be said to involve an element of "misrepresentation," in the generic sense of that word, but "[s]o far as misrepresentation has been treated as giving rise in and of itself to a distinct cause of action in tort, it has been identified with the common law action of deceit," and has been confined "very largely to the invasion of interests of a financial or commercial character, in the course of business dealings." Prosser, Torts, § 85, "Remedies for Misrepresentation," at 702–703 (1941 ed.). See also 2 Harper and James, Torts, § 29.13, at 1655 (1956).

It follows that respondents' claim is one "arising out of . . . misrepresentation," within the meaning of § 2680 (h), and hence is not actionable against the Government under the Tort Claims Act. Accordingly, the judgment below must be

Reversed.

MR. JUSTICE DOUGLAS dissents.

MR. JUSTICE STEWART took no part in the consideration or decision of this case.